

No. 3078

1126

IN THE

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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

UNITED STATES OF AMERICA,  
as Trustee and Guardian of, and  
ex rel SAM WILLIAMS,

*Appellant,*

vs.

SEUFERT BROTHERS COMPANY, a  
corporation, and F. A. SEUFERT,

*Appellee.*

## TRANSCRIPT OF RECORD

CLARENCE L. REAMES,  
United States Attorney,

ROBERT R. RANKIN,  
Assistant United States Attorney,  
Attorneys for Appellant

A. S. BENNETT,  
Attorney for Appellee

FILED

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F. D. MONCKTON,  
CLERK



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corporation, and F. A. SEUFERT,

*Appellee.*

Writ of Error to the United States District Court  
for the District of Oregon.

## TRANSCRIPT OF RECORD



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Be it remembered that on the 9th day of September, 1916, there was filed in the District Court of the United States, for the District of Oregon, a complaint, in words, letters and figures as follows, to-wit: (omitting title of court and cause)

## COMPLAINT.

Comes now the United States of America, by Robert R. Rankin, Assistant United States Attorney for the District of Oregon, and pursuant to authority conferred upon him by the Attorney General of the United States, brings this, the complaint of the United States, against the above named defendants, and for cause of action against said defendants complains and alleges:

### I.

That the United States of America is the trustee and guardian of the confederated tribes and bands of Indians known as the Yakima Nation, located upon the Yakima Indian Reservation, in the State of Washington, and all of the individual members of said Yakima Nation; and as such trustee and guardian the United States is empowered to and charged with the duty of controlling and protecting the property of said allotted Yakima Indians and each of them for their collective and individual benefit.

### II.

That Sam Williams is a full blood Indian and citizen of the United States, born off of the present terri-

torial limits of the Yakima Indian Reservation, but within the territorial boundaries of the present State of Washington; his mother was a member of the Cowlitz Tribe of Indians and his father a member of the Yakima Tribe; he has lived for twenty-one years last past off of the reservation and upon the south bank of the Columbia River in the State of Oregon and has there taken up a homestead under the laws of the United States, located near the City of The Dalles, in the State and District of Oregon, and there has taken up his residence with his family and adopted the habits of civilized life;

That he is allotted as allottee No. 1525 upon the said Yakima Indian Reservation to certain lands within the boundaries of said reservation to which a trust patent was issued in favor of said Sam Williams for eighty acres of land upon said Yakima Indian Reservation, on the 10th day of July, 1897, a portion of which allotment has always been and now is held in trust for said Sam Williams by the United States under the act of Congress approved February 8, 1887 (24 Stat. L. 388), as amended by act of Congress approved February 28, 1891 (26 Stat. L. 794); that said Sam Williams is in the charge and under the control of the superintendent of the Yakima Indian Reservation who has held and now holds certain moneys and trust funds as the property and for the use of said Sam Williams; that said Sam Williams is by reason of the facts above set forth a Yakima Indian, allottee, and ward of the United States.



## III.

That the defendant Seufert Brothers Company was at all times herein mentioned and now is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at the City of The Dalles, County of Wasco and State of Oregon, and now and for many years last past has been engaged in fishing and canning salmon and in operating scow fish wheels on the Columbia River near said city;

That F. A. Seufert is a citizen of the United States residing at The Dalles in said state, and said defendant is a citizen of the State of Oregon, residing at The Dalles and Portland in said state and is president of the said corporation.

## IV.

That on or about the 24th day of January, 1910, upon petition from Sam Williams and payment in full of the purchase price therefor, the United States sold and gave title in fee by a patent from the said United States to one J. S. McMeachan, to forty acres of said allotment on the Yakima Indian Reservation held in trust by the United States for said Sam Williams; that by said sale there was derived certain proceeds which sum of money was then and there placed to the credit of said allotment owner, Sam Williams, and which then and there became a trust fund for the use and benefit of said Sam Williams, allottee, and held in the custody and under the control of the United States by its Com-

missioner of Indian Affairs, and said superintendent of the Yakima Indian Reservation; that all the proceedings had and mentioned in this paragraph of this complaint were under and by virtue of the act of Congress approved March 1, 1907 (34 Stat. L. 1018), and the rules and regulations prescribed by the Secretary of the Interior in pursuance thereof.

## V.

That a substantial portion of the funds derived from said sale and held in trust by the United States as aforesaid, were used and expended by said Sam Williams under the direction of and in the manner formally authorized by the Commissioner of Indian Affairs under the act and regulations last above mentioned in paragraph IV hereof, during the years 1909 and 1910, in the building, construction, maintenance and repairing of a scow fish wheel to be used and operated in and at both the north and south banks of the Columbia River between one and four miles above said City of The Dalles.

## VI.

That on or about the 12th day of May, 1913, the said Sam Williams secured from the State of Oregon a scow fish wheel license numbered "034," which lawfully entitled said Sam Williams to maintain and operate a scow fish wheel during the lawful fishing season of 1913 and 1914; that on or about the 1st day of April, 1914, the said Sam Williams secured from the State of Oregon a scow fish wheel license numbered

"026," which lawfully entitled said Sam Williams to maintain and operate a scow fish wheel during the lawful fishing season of 1914 and 1915, at the usual and accustomed fishing place of said Sam Williams, to-wit: "that certain portion of the rocks which at low water constitute the south bank of the Columbia River opposite lot three (3), in section thirty-six (36), township two (2) north of range thirteen (13) east of the Willamette Meridian, in the County of Wasco, State of Oregon."

## VII.

(a) That while said Sam Williams was endeavoring to so lawfully maintain and operate said scow fish wheel at said place above described during the month of May, 1913, one Frank A. Seufert, Jr., one Guy Whipple, one Hank Wickman, and one Charley Switchler, employes of the defendant company, came to the fishing place of the said Sam Williams as described in paragraph VI hereof, and ordered and directed those in charge of the scow fish wheel owned by and belonging to said Sam Williams to move said scow fish wheel away from said fishing place; Sam Williams was absent and his employes refused to move said scow whereupon the officers and employes of the defendant company loosened the cables and caused said scow fish wheel to drift into the current of the Columbia River which is swift and dangerous at said point, and which carried said scow fish wheel away, and that the wheel and planking in said boat was broken and strained and the construction of said scow and fishing gear was

damaged and caused the expenditure of time and money in rescuing said wheel from the current of the river and in repairing the same, said Sam Williams being damaged by the acts of the said defendant in the sum of \$100.00.

(b) That by the reason of said wilful acts and conduct of said defendants, their agents and employes, said Sam Williams was hindered and prevented from lawful fishing at said place and thereby damaged by the acts of said defendants, its agents and employes in the sum of \$100.00.

### VIII.

That while said Sam Williams was endeavoring to so lawfully operate said scow fish wheel at said place,

(a) On or about the 29th day of April, 1914, the agents and employes of the defendant, acting under and by authority of the defendant company herein, again came to said fishing place and ordered Sam Williams to remove said scow fish wheel, or they, as the agents and employes of the said defendant company, would turn the same loose; that plaintiff refused to remove the said scow whereupon said agents or employes of the defendant company untied the ropes anchoring said scow to the land, and forced said scow into the current of the Columbia River, whereupon it drifted down said river endangering the lives of the plaintiff and his men and damaging said scow in the sum of \$25.00.

(b) That on or about the 3d day of May, 1914, the said Sam Williams, in a further attempt to claim, possess and enjoy said fishing rights and privileges

previously acquired at said usual and accustomed fishing place, caused to be placed thereon certain steel and wire cables of the value of \$7.50 and attached the same to the iron post driven in the rocks at said point for the purpose of anchoring the said scow to the said rocks; that the defendant company, its officers, agents and employes, during the night of the 3d day of May, 1914, unfastened the cables of the said plaintiff and threw them into the said river, whereby the said cables were lost and never recovered, to the damage of the said Sam Williams in the sum of \$7.50.

(c) That on or about the 4th day of May, 1914, said Sam Williams, in a further attempt to claim, possess and enjoy said fishing rights and privileges at said place, had anchored said scow at a point on the south bank of the Columbia River below the usual and accustomed fishing place and that one F. A. Seufert, the president of said company, one Hank Wickman, one Guy Whipple, and one Al Smith, together with several members and employes of the defendant company, went to the place on the south bank of the Columbia River where the scow fish wheel of Sam Williams was anchored, and under the direction and authority of said defendant company, and its president, said agents and employes of the defendant company, unfastened the lines holding said fishing scow to the banks of the river, pulled up the anchors attached to said lines and holding the scow out of and away from the current of the river and turned said fishing scow adrift into the swift waters of the Columbia River, whereby said scow was carried down for some distance and dashed against the



rocks, whereby said fish wheel and scow was damaged in the sum of \$448.27.

(d) That by reason of the said wilful acts and conduct of said defendant, their agents and employes, said Sam Williams was, during the fishing season of 1914 and 1915 hindered and prevented from lawfully fishing at said place and thereby damaged by the acts of said defendants, its agents and employes in the sum of \$750.00.

(e) That by reason of the said wilful acts and conduct of said defendant, their agents and employes, said Sam Williams was, during the fishing season of 1915 and 1916 hindered and prevented from lawfully fishing at said place and thereby damaged by the acts of said defendants, its agents and employes in the sum of \$750.00.

WHEREFORE, your plaintiff prays judgment against defendants in the sum of \$2180.77 on account of said acts of said defendant, its agents and employes against said allottee, Sam Williams, and for its costs and disbursements herein.

Dated at Portland, Oregon, this 9th day of September, 1916.

ROBERT R. RANKIN,  
Assistant United States Attorney.

United States of America,  
District of Oregon.—ss.

I, Robert R. Rankin, being first duly sworn, on oath depose and say:

That I am an Assistant United States Attorney for the District of Oregon; that I have prepared the foregoing complaint from facts and information within my personal knowledge and that the same is true as I verily believe.

ROBERT R. RANKIN.

Subscribed and sworn to before me this 9th day of September, 1916.

(Notarial Seal)

John J. Beckman,  
Notary Public for Oregon.

My commission expires February 16, 1917.

Endorsed: U. S. District Court. Filed September 9, 1916.

G. H. Marsh, Clerk,  
District of Oregon.

And thereupon, on the 13th day of October, 1916, the defendants in the above entitled court and cause filed the demurrer to the complaint in words, letters and figures as follows, to-wit:

### DEMURRER.

Now comes the defendant in the above entitled cause and demurs to the complaint herein upon the ground that it appears from the said complaint that the court has no jurisdiction of the cause and that the complaint

does not state facts sufficient to constitute a cause of action.

A. S. BENNET,  
Attorney for Defendant.

And on October 27, 1917, said demurrer was submitted upon briefs of counsel and on the 29th day of January, 1917, the court rendered the following opinion and order, to-wit:

"This is an action by the General Government, as trustee and guardian of and ex rel Sam Williams, against Seufert Brothers Company, a corporation, and F. A. Seufert, to recover damages for setting afloat a certain fish wheel or fish scow on the Columbia River. The sufficiency of the complaint is tested by demurrer.

The only question presented is whether the Government is entitled to bring the action as trustee or guardian of Sam Williams.

The same question received consideration at the hands of this court in the case of *United States ex rel Williams vs. Seufert Bros. Co.*, 233 Fed. 579. Since the opinion in that case was written the case of *United States vs. Nice*, 241 U. S. 591, has been decided, and it is thought that that case holds to a view contrary to the Williams case.

It does not so impress me. What was said in the Williams case predicated upon the decision of the case entitled *Matter of Heff*, 197 U. S. 488, may be eliminated, inasmuch as that case is overruled by *United*



States vs. Nice, and yet the conclusion reached remain as not in conflict with the latter case. Section 6 of the act of February 8, 1887 (24 Stat. 388), provides, among other things, that:

“Every Indian born within the territorial limits of the United States \* \* \* who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.”

It is under that clause, and by reason of his own acts which he could rightfully exercise in pursuance of its terms, that Williams is exempted from the general guardianship of the Government. He has disassociated himself from his tribe, has departed from the reservation of his adoption, has lived for twenty-one years among civilized people and off his reservation, has taken up civilized life, and has entered a homestead, as all citizens are entitled to do under the act, and, as said in the Williams case, “It is hardly possible to conceive of a condition that would more completely impose upon him the status of a citizen and evidence a more perfect waiver of all dependence for affording him redress upon the government in the capacity of a guardian of one acting under any legal disability.”

I repeat, further, what was said in that case, namely: "That the government still remains Williams' trustee as it relates to the title to his allotment, and any money distribution that he may be entitled to by reason of once having been a member of the Yakima confederated tribes, can have no bearing upon the question as to whether he continues to be a ward of the government."

In consideration of these remarks, the demurrer to the complaint will be sustained, and the complaint dismissed."

And thereupon plaintiff on the 21st day of July, 1917, filed the following Assignment of Error in said court and cause, to-wit:

### ASSIGNMENT OF ERROR.

The above named plaintiff hereby assigns error in the decree of the District Court of the United States for the District of Oregon, in the above entitled case, as follows:

#### I.

The said court erred in sustaining the demurrer to the complaint herein.

#### II.

The said court erred in holding that Sam Williams was not a ward of the United States.

III.

The said court erred in not overruling the demurrer to the complaint herein.

ROBERT R. RANKIN,  
Assistant United States Attorney.

Dated at Portland, Oregon, this 21st day of July, 1917.

And with said Assignment of Error filed the following Petition for Writ of Error, to-wit:

PETITION FOR WRIT OF ERROR.

The United States of America, as Trustee and Guardian of and ex rel Sam Williams, plaintiff in the above entitled cause, considering itself aggrieved by the final order and judgment of this court made and entered against it, and in favor of the defendants, on the 29th day of January, 1917, and in the rulings in said cause made, as set forth in its assignments of error, filed herein, petitions said court for an order allowing said plaintiff to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignments of error filed herewith, under and in accordance with the rules of the United States Circuit Court of Appeals in that behalf made and provided, and that all further proceedings in this court be suspended and stayed until the dismissal of said writ of error by the United States Circuit Court of Appeals, and relative thereto, plaintiff respectfully shows:

That by reason of the premises, plaintiff alleges manifest error has happened, to the great damage of the United States as Trustee and Guardian of and ex rel Sam Williams, plaintiff herein:

That plaintiff has filed herewith its assignments of error, upon which it relies and will urge in the above entitled court;

WHEREFORE, plaintiff prays that a writ of error may issue out of the United States Circuit Court of Appeals for the Ninth Circuit, to this court, for the correction of the errors so complained of, and that a transcript of the record of proceedings, papers and all things concerning the same, upon which said judgment was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, to the end that said judgment be reversed, and that plaintiff recover judgment as demanded in its complaint.

Dated at Portland, Oregon, this 21st day of July, 1917.

ROBERT R. RANKIN,  
Assistant United States Attorney.

Endorsed: Filed July 21, 1917. G. H. Marsh,  
Clerk District of Oregon.

And said court thereupon, on the said 21st day of July, 1917, issued the following Order allowing the Writ of Error:

## JUDGMENT

And afterwards, on, to-wit, the 29th day of January, 1917, Honorable Charles E. Wolverton, Judge of the above entitled court, made and entered the judgment in words, letters and figures, as follows, to-wit:

“This cause was submitted to the Court by agreement of counsel upon written briefs filed herein, the complaint appearing by Mr. Robert R. Rankin, Assistant United States Attorney, and the defendants appearing by Mr. A. S. Bennett, of counsel, on consideration whereof.

“It is ordered and adjudged that said demurrer be and the same is hereby sustained, and that plaintiff’s complaint herein be and the same is hereby dismissed.”



**ORDER ALLOWING WRIT OF ERROR.**

This 21st day of July, 1917, came the plaintiff above named, United States of America, as Trustee and Guardian of and ex rel Sam Williams, appearing by Robert R. Rankin, Assistant United States Attorney, and filed herein and presented to the court its petition praying for the allowance of a writ of error from the decision and judgment of this court, made and entered on the 29th day of January, 1917, in favor of the defendants above named, and against said plaintiff, and the rulings made on the demurrer filed in the above entitled cause out of the United States Circuit Court of Appeals in and for the Ninth Circuit, to this court, together with certain assignments of error intended to be urged by it, within due time; and also praying that a transcript of the record and proceedings and papers upon which said judgment herein was entered, duly authenticated, be sent to the said Circuit Court of Appeals for the Ninth Circuit, and also praying that all further proceedings in this court be suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

NOW, THEREFORE, in consideration thereof, this court does allow said writ of error, and it is ordered that all further proceedings in this court be, and the same are hereby suspended and stayed, until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.



Dated at Portland, Oregon, this 21st day of July,  
1917.

CHAS. E. WOLVERTON,  
Judge of the United States District Court.

And the following Writ of Error was thereupon  
issued out of and duly filed in the said court, to-wit:

### WRIT OF ERROR.

The United States of America—ss.

The President of the United States of America.

To the Judge of the District Court of the United States  
for the District of Oregon:

Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Charles E. Wolverton, one of you, between the United States of America, plaintiff and plaintiff in error, and Seufert Brothers Company, a Corporation and F. A. Seufert, its President, defendants and defendants in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals



for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Edward Douglas White,  
Chief Justice of the Supreme Court of the United  
States this 21st day of July, 1917.

(Seal)

G. H. MARSH,

Clerk of the District Court of the United States for  
the District of Oregon.

And on the 21st day of July, 1917, the following  
Citation on Writ of Error was issued out of said court  
and on the 26th day of July, 1917, filed therein with  
return of service thereon, all in words, letters and figures  
as follows, to-wit:

*In the District Court of the United States for the  
District of Oregon.*

United States of America, as Trustee and Guardian of  
and ex rel Sam Williams,

*Plaintiff,*

*vs.*

Seufert Brothers Company, a Corporation, and F. A.  
Seufert, its President,

*Defendants.*

## CITATION ON WRIT OF ERROR.

United States of America,  
District of Oregon—ss.

To Seufert Brothers Company, a Corporation, and F.  
A. Seufert, its President, and A. S. Bennett, Attor-  
ney for said Defendants.

Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein the United States of America, as Trustee and Guardian of and ex rel Sam Williams, is plaintiff in error, and Seufert Brothers Company, a Corporation, and F. A. Seufert, its President, are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said District, this 21st day of July, in the year of our Lord one thousand nine hundred and seventeen.

CHAS. E. WOLVERTON,  
Judge of the United States District Court.

## RETURN ON SERVICE OF WRIT.

United States of America,  
District of Oregon—ss.

I hereby certify and return that I served the annexed citation on writ of error on the therein named Seufert Bros., a Corporation, by F. A. Seufert, President, and F. A. Seufert, individually, by handing to and leaving a true and correct copy thereof with F. A. Seufert, at The Dalles, in said District, on the 24th day of July, A. D. 1917.

John Montag, U. S. Marshal.  
By Frank T. Berry, Deputy.

And praecipe for the making of this transcript was on the said 21st day of July, 1917, made and filed with the Clerk of said court in words, letters and figures as follows, to-wit:

## PRAECIPE FOR TRANSCRIPT.

To the Clerk of the above entitled Court.

You will please prepare a transcript of the complete record in the above entitled case, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the writ of error to be perfected herein, and include in said transcript the following proceedings, papers, records and files, to-wit:

1. Complaint.

2. Demurrer.
3. Judgment of the Court on Demurrer.
4. Petition for Writ of Error.
5. Assignments of Error.
6. Order Allowing Writ of Error.
7. Writ of Error.
8. Citation on Writ of Error.
9. This Praecipe.

and any and all records, entries, pleadings, proceedings, papers and files necessary or proper to make a complete record upon said writ of error in said case, said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

Dated at Portland, Oregon, this 21st day of July, 1917.

ROBERT R. RANKIN,  
Assistant United States Attorney.